IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.235 Of 2000.
Judgment reserved on: 23.7.07.
Date of decision: July 26th, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Amrik Singh. ..... Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondent: Mr. Suneet Goel, Advocate.

Surinder Singh, J :

The instant appeal has been filed by the State, feeling aggrieved by and dissatisfied with the judgment of acquittal passed by the Additional Chief Judicial Magistrate in criminal case No.41/2 of 1996, decided on 1.9.1999.

Leave to appeal was granted on 5.5.2000. Now the matter has been taken up for final hearing.

It is contended in the appeal that the learned trial court has not properly appreciated the evidence on record and reasoning given for acquittal is based upon unrealistic standard, which has caused the miscarriage of justice.

I have heard Shri V.K. Verma, learned Additional Advocate General for the State and Shri Suneet Goel, learned

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Whether reporters of local Papers may be allowed to see the judgment? Yes .

counsel for the respondent and have reappreciated and examined the evidence on record.

In brief, the prosecution story is that PW2 Sidharth Parmar, complainant was driving his Maruti Car No.HIH-70 and was going to Chandigarh with his mother Dr. Veena Parmar (PW3), who was sitting besides him on the front seat. When they reached near 'Andha Mor', Temple of Mahunag Devta at Vaknaghat, from the opposite side a truck No.HR-05-7665, being driven by respondent rashly and negligently was overtaking the bus of the Haryana Roadways, on the National Highway. In the process of the overtaking, the truck of the respondent came to its wrong side and hit the Maruti Car of the complainant, which was badly damaged and his mother Dr. Veena Parmar sustained injuries. The truck 2-3 feet back to extract her from the car and was removed to the Indian Gandhi Medical College, Shimla, for treatment.

The police was informed about the accident. The statement Ext.PW2/A of Sidharath Parmar was taken down by the police, on the basis of which formal FIR Ext.PW10/A was registered. The police took the photographs and prepared site plan Ext.PW10/B. The alleged offending truck was taken into possession vide memo Ext.PW7/C. Dr. Veena Parmar was medically examined. Her MLC is Ext.PW8/A. She had sustained simple injuries on her person. Police had recorded the statements of the witnesses and after completing the challan, it was presented in the court for trial.

In order to prove the case, prosecution has examined PW1 Rajeev Sood, PW2 Sidharth Parmar, complainant, PW3 Dr.

Veena Parmar, the complainant's mother, PW4 Bhajna Nand & PW5 Ram Rattan, PW6 Dr.R.G. Sood, PW7 Chinta Mani, Motor Mechanic, PW8 Dr. D.R. Sharma, PW9 Manmohan Chanda, PW10 HC Harinder Singh, Investigating Officer and PW11 HC Shyam Lal. The respondent was also examined under Section 313 of the Code of Criminal Procedure. He has denied the entire circumstances attendant upon him and stated that this was a false case against him.

The learned trial court took the view that the independent witnesses (PWs 4 and 5) aforesaid had turned hostile to the prosecution, they did not know how the accident had taken place and that the Mechanic (PW7) who had examined the vehicles involved in the accident did not deny that the car was in a speed and driver could not control his speed and hit the truck. PWs 2 and 3 aforesaid also did not spell out that the respondent was driving the truck rashly or negligently, so as to endanger human life or personal safety of others, as a result of which, Dr. Veena Parmar (PW3) sustained the simple injuries on her person and further which was the bus being overtaken by the respondent, Dr.Veena Parmar (PW3) also did not disclose what was the speed of the Car and the Investigating Officer HC Harinder Singh (PW10) had admitted in the cross-examination that there was enough space left on the side of the car and the truck was removed from the site of the accident to a distance of about 3 feet the spot, the truck was loaded and was going uphill, therefore, the question of driving the vehicle in high speed does not arise at all. So taking all these factors in mind, the benefit of

doubt was given to the respondent. Consequently, he was acquitted.

In my opinion, the view of the learned trial court is perverse as not born out from the record. The trial court has based its findings on conjectures and surmises it has given the benefit of fanciful doubt and not reasonable doubt to the respondent.

In fact to prove the offence under Section 279 of the Indian Penal Code, the prosecution is under obligation to prove that:-

(i) the accused was driving the vehicle;

(ii) it was a public way on which he was driving such vehicle;

(iii) he was driving in rash or negligent manner; and

(iv) the driving was such as to endanger human life or was likely to cause hurt or injury.

To bring home the guilt under Section 337 of the Indian Penal Code, the prosecution is also required to prove the following elements:-

(i) the hurt must have been caused to a person;

(ii) the cause of hurt must be the act of the accused; and

(iii) such act must have been done with rashness or negligence.

A bare statement that the vehicle was being driven at a high speed cannot prove the negligent act on the part of the accused-respondent nor the speed is the criteria. Ordinarily, the burden of proof that the vehicle was driven rashly or

negligently is on the prosecution and it is particularly so when the vehicle hits against something moving which might have contributed to the accident. Therefore, the possibility of a pure error of judgment on the part of the accused-driver is to be ruled out. The proof of due care and caution is the only defence available to the accused.

In the instant case, the complaint Sidharath Parmar has categorically stated that he was driving on the left side of the road while going from Shimla to Chandigarh. The bus was coming from the opposite side on his right side and the offending truck was overtaking the bus. On seeing the truck, coming towards him, he applied breaks and halted his vehicle, but the truck hit his vehicle and damaged it from the left side and also caused injuries to his mother (PW3). This statement has been corroborated by PW3 Dr. Veena Parmar. She has stated that the respondent was driving the truck which fact is not disputed. In the cross-examination, both these witnesses have stated that the bus and the truck coming from the opposite side were parallel to each other on the sharp curve, many persons were present near the accidental site, in and outside the temple nearby. PW2 has specifically stated that after hitting his vehicle by the truck driver, his car was pushed back but did not turn around. PW4 Bhajna Nand and PW5 Ram Rattan have denied the said accident having taken place in their presence. PW6 Dr. R.G. Sood and PW8 Dr. D.R. Sharma have proved the injuries on the person of PW3.

On the strength of the evidence discussed above, the ingredients of both the offences stood proved. It is also not

denied that the respondent was not driving the truck in question. The learned trial court has given undue importance to the statement of PW7 Chinta Mani, Mechanic, who had examined the vehicle after the accident and his opinion could not have been made the basis for the acquittal of the respondent. On his opinion, that car appeared to be on a high speed. There was no cogent basis to state so. Photographs Exts.P1 to P6 read with site plan Ext.PW10/B clearly show that the alleged offending truck was on the wrong side, i.e. extreme right side of the road on the curve, whereas, the Maruti Car was at its own left side. The prosecution had successfully discharged its initial onus whereas, respondent's case was of denial simplicitor. He did not even suggested in cross-examination, the exercise of due care and caution by him nor so explained in his statement under Section 313 of the Code of Criminal Procedure, what steps he took to avert the accident.

On the other hand as already stated above, PW2 Sidharath Parmar has clearly unfolded the story of the prosecution as alleged, which was corroborated by PW3 aforesaid. The respondent was overtaking the bus on a curve without having been given a signal by the driver of the bus, the negligence on the part is writ large.

In these circumstances, I find that the basis made for the judgment of acquittal passed by the learned trial court is not born out from the evidence on record. Accordingly, the impugned judgment deserves to be converted into the conviction.

On the reappraisal of the evidence, in my considered opinion, the offences under Sections 279 and 337 of the Indian Penal Code stand established against the respondent. Accordingly, the impugned judgment of acquittal is set-aside and the respondent is convicted under both the offences.

SENTENCE

I have heard the learned counsel for the respondent, on the point of sentence. The learned counsel for the respondent-convict has prayed to release the respondent on probation, on the ground that the respondent is a sole bread earned of the family. The alleged offence had taken place about a decade ago. He had suffered torture of trial for about three years before the trial court and for more than 6 years in the appeal.

I have considered the exonerating and exaggerating circumstances in the matter. It is a notorious fact that the accidents of motor vehicles are rampant on the public highways due to the rash or negligent driving by the drivers, on account of flouting of the traffic rules and lack of road sense. This menace is required to be curbed without showing any leniency. If the stern action is not taken at the right time, it may increase and the life of the public will always remain in peril. Therefore, the benefit of Probation of Offenders Act cannot be extended to the respondent, as it will be a misplaced sympathy. However, keeping in view the fact that the respondent has been facing the trial before the court below for a considerable long time and before this court for more than a decade and there is no history of his previous

conviction in the like offences, the interest of justice will be met, if the respondent is sentenced till rising of the court and to pay a fine of Rs.500/- under each of the sections aforesaid. In case of making any default in payment of fine, the respondent will undergo simple imprisonment for a period of one month under each of the sections. The fine be deposited on or before 31st August, 2007. The learned trial court will ensure the compliance of the order. The matter stands disposed of accordingly.

July 26th, 2007. **(Surinder Singh)**
(PDS) **Judge**.